

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Lake Charles, Louisiana and
Sour Lake, Texas)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

) MB Docket No. _____
) RM - _____
)
)

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

PETITION FOR RULE MAKING

Cumulus Licensing LLC ("Cumulus"), licensee of KYKZ(FM), Lake Charles, Louisiana, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 241C1 from Lake Charles, Louisiana and allot Channel 241C1 to Sour Lake, Texas as that community's first local service. If this Petition is granted, Cumulus will file an application for Channel 241C1 at Sour Lake and construct the facilities as authorized. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Lake Charles, Louisiana	241C1, 258C0, 277C2	258C1, 277C2
Sour Lake, Texas	---	241C1

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I. Technical Analysis

1. As demonstrated in the Technical Exhibit, Channel 241C1 can be allotted to Sour Lake at coordinates 30-04-42 North Latitude, 93-54-35 West Longitude consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic allotments

and facilities. *See* Figure 1. A 70 dBu signal can be provided to Sour Lake from the proposed reference coordinates. *See* Figure 2. The relocation of KYKZ from Lake Charles to Sour Lake will result in a predicted net gain in population of 302,571 persons within the KYKZ 60 dBu contour. *See* Figure 3. The entire loss area will continue to receive at least 5 other aural services and will thus remain well served. *See* Figure 4.

II. Change in Community of License

2. Cumulus desires to change the community of license of KYKZ from Lake Charles to Sour Lake under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 241C1 at Sour Lake is mutually exclusive with the current use of Channel 241C1 at Lake Charles. *See* Figure 1. Second, Lake Charles will not be deprived of its only local service because it will continue to be served 4 FM stations and 3 AM stations. Third, the provision of a first local service at Sour Lake (2000 U.S. Census population 1,667) under Priority 3 will result in a preferential arrangement of allotments over the retention of an eighth local service at Lake Charles (2000 U.S. Census population 71,757) under Priority 4. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. Sour Lake is not located in an Urbanized Area. The proposed 70 dBu contour of KYKZ will cover 100% of the Port Arthur and Beaumont Urbanized Areas. However, KYKZ is currently located within the Lake Charles, Louisiana Urbanized Area. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) ("*Headland*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Nevertheless, a *Tuck* showing is provided. In making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, KYKZ would place a 70 dBu contour over 100% of the Port Arthur Urbanized Area and the Beaumont Urbanized Area. Sour Lake's population (2000 U.S. Census 1,667) is 2.9% of that of Port Arthur (2000 U.S. Census 57,755) and 1.5% of that of Beaumont (2000 U.S. Census 113,866). Sour Lake is located 28.02 kilometers from Port Arthur and 35.70 kilometers from Beaumont. These figures are similar to those of other suburban communities granted a first local preference. *See e.g., Park City, Montana*, DA 04-285 (2004) (Park City's population is less than 1% of that of Billings, and Park City is located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896, 16899 (1996) (Newcastle's population is less than 1% of that of Oklahoma City, and Newcastle is located 15 miles from Oklahoma City). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland*, 10 FCC Rcd at 10355. The following analysis of the eight *Tuck* factors demonstrates the independence of Sour Lake from Port Arthur and Beaumont.

(1) *Extent to which the residents of Sour Lake work in Sour Lake.*

According to 2000 Census figures, 139 of the 623 employed individuals in Sour Lake, or 22%, work at their place of residence. See Exhibit 2. This percentage compares favorably with other independent communities. See, e.g., *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001), *application for review pending* (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) *Newspapers and other media that cover Sour Lake's local needs and interests.* The *Liberty & Thicket Magazines* are monthly publications that feature stories of local interest in Liberty and Hardin Counties. Because Sour Lake is in Hardin County, the *Liberty & Thicket Magazines* provides the community of Sour Lake with local coverage. Therefore, the residents of Sour Lake do not have to rely on the media in Port Arthur or Beaumont. See Exhibit 2.

(3) *Community leaders and residents perceive Sour Lake as being separate from Port Arthur and Beaumont.* Sour Lake was first settled in 1835 and was originally called Sour Lake Springs after the mineral springs that fed the nearby lake. These mineral springs allowed Sour Lake to thrive as a health resort town throughout the 1800s. In July, 1902 oil was discovered in Sour Lake and it became an oil boom town producing about 90,000,000 barrels of oil from 1902 to 1948. With this oil boom came railroad service, and by 1914 the Texas and New Orleans Railroad and the Beaumont, Sour Lake and Western Railway were serving Sour Lake. The Bertha Cornwell Museum of Sour Lake History provides an extensive history of the development of Sour Lake. See Exhibit 2.

(4) ***Sour Lake has its own local government and elected officials.*** Sour Lake operates independently of any other government and is administered by a mayor and city council. The city council is comprised of six members, one of which is the mayor, and all of which are elected by the residents of Sour Lake. The city council meets on the third Tuesday of each month. In addition, the city council meets for council workshops on special issues. The citizens of Sour Lake are encouraged to attend council meetings and workshops and to express their views and concerns. In addition to the city council, Sour Lake employs a city manager, city attorney, and a chief of police. Sour Lake also has a water, sewer, and street department. The department is currently working on a new water tower and to improve Sour Lake's drainage. The Sour Lake Community Center is administered by Sour Lake for the residents of Sour Lake. The Sour Lake Economic Development Corporation meets on the second Monday of each month to discuss the economic development of Sour Lake. *See Exhibit 2.*

(5) ***Sour Lake has one zip codes.*** The zip code assigned to Sour Lake is 77659, and the U.S. Postal Service operates one office in Sour Lake at 665 6th Street. *See Exhibit 2.*

(6) ***Sour Lake has its own commercial establishments and health facilities.*** Sour Lake is home to the Sour Lake Chamber of Commerce and a variety of businesses and commercial establishments. A number of local businesses identify with the community by using "Sour Lake" in their name, including the Sour Lake Motor Company, Sour Lake Drug, Sour Lake Veterinary Clinic, Sour Lake Contracting, and Sour Lake Family Medical. Other Sour Lake retail and commercial businesses include Citizens Bank, Community Bank and Trust, Dairy Queen, Oil Patch Café, Economy Inn,

Big Thicket Motors, Calvin Ford, Dollar General, Ernie's Hardware, Pinewood Grocery, Brookshire Brothers, and M&D Texaco. *See Exhibit 2.*

Health care is provided by the Sour Lake Family Medical Center and by a number of sole practitioners. Sour Lake is also home to a number of religious and community organizations, including First Baptist Church, First Christian Church, First Methodist Church, Grayburg Baptist Church, Pinewood Baptist Church, Sour Lake Gospel Tabernacle, the Sour Lake Lions Club, the Hardin County Clean Committee of Sour Lake, and the Sour Lake Lodge. *See Exhibit 2.*

(7) *Sour Lake is a separate and distinct advertising market from Port Arthur and Beaumont.* The *Liberty & Thicket Magazines* provide the businesses of Sour Lake with a place to advertise to the residents of Sour Lake without relying on the Port Arthur or Beaumont advertising markets. *See Exhibit 2.*

(8) *Sour Lake has its own schools, library, police protection and fire protection.* The Hardin-Jefferson Independent School District administers the following schools for the residents of Sour Lake: Sour Lake Elementary, China Elementary, Henderson Middle School, and Hardin-Jefferson High School. Sour Lake Elementary and Hardin-Jefferson High School are located in Sour Lake. The Alma M. Carpenter Public Library is located in Sour Lake and is open to the public Monday through Friday. The library provides the community of Sour Lake with the following services: book, audio and video check out, copy and fax services, and computer and internet services. Sour Lake also has a full time police department and fire department. *See Exhibit 2.*

4. Sour Lake is clearly independent of Port Arthur and Beaumont and therefore deserving of a first local service. As demonstrated above, Sour Lake satisfies all of the independent community indicia required by *Tuck*.

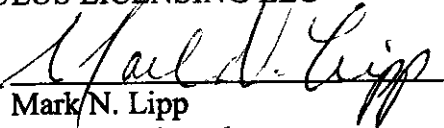
III. CONCLUSION

For the foregoing reasons the Commission should delete Channel 241C1 at Lake Charles, Louisiana and allot Channel 241C1 at Sour Lake, Texas as that community's first local service. Cumulus reiterates that if the Commission allots Channel 241C1 at Sour Lake as that community's first local service, it will file an application for Channel 241C1 at Sour Lake and will construct the facilities as authorized. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

CUMULUS LICENSING LLC

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Its Counsel

May, 24 2004

TECHNICAL EXHIBIT

**Engineering Statement
In Support of a
Petition for Rule Making
Channel 241C1 (KYKZ), Sour Lake, Texas**

General

Cumulus Licensing, LLC ("Cumulus") hereby petitions the Commission to delete channel 241C1 at Lake Charles, Louisiana and allocate channel 241C1 at Sour Lake, Texas as that community's first local service. No other spectrum modifications are necessary to effectuate this change.

The proposed amendment to the Table of Allotments is as follows:

<u>City</u>	<u>Current</u>	<u>Proposed</u>
Lake Charles, LA	241C1, 258C0, 277C2,	258C1, 277C2
Sour Lake, TX	-----	241C1

Exhibits Explained

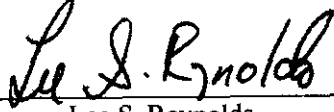
Exhibit E, Figure 1 is an allocation study showing that the proposed channel 241C1 at Sour Lake, Texas is fully spaced. Exhibit E, Figure 2 shows that the proposed allocation will provide 100% coverage of the new community of license (Sour Lake) from the proposed KYKZ allocation coordinates. It is these coordinates that Cumulus chooses to use for the purposes of this petition for rule making.

Exhibit E, Figure 3 is a gain/loss study for the proposed deletion at Lake Charles and the addition at Sour Lake. The end result will be a new service to 302,571 persons with an increase in coverage area of 5,890 square kilometers. Exhibit E, Figure 4 is a remaining services study that demonstrates no under-served areas are created by the proposed modification of KYKZ.

Conclusion

The instant petition proposes to provide Sour Lake, Texas (population 1,667 according to the 2000 US Census) its first local service. Lake Charles will remain well served by other commercial FM stations.

For Cumulus:

A handwritten signature in black ink, reading "Lee S. Reynolds". The signature is written in a cursive style with a large, stylized "L" and "R".

Lee S. Reynolds

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205.618.2020

Engineering Statement
In Support of a
Petition for Rule Making
Channel 241C1 (KYKZ), Sour Lake, Texas

Channel 241C1 Allocation Study

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REFERENCE      •
30 04 42 N      CLASS = C1
93 54 35 W      Current  Spacings
----- Channel 241 - 96.1 MHz -----
                                DISPLAY DATES
                                DATA   03-25-04
                                SEARCH  03-27-04

Call      Channel      Location      Dist      Azi      FCC      Margin
-----
      Community of Sour Lake      TX      48.42      277.9
      Reference Coordinates:
      North Latitude: 30-08-13
      West Longitude: 94-24-27

KYKZ.A  APP-Z 241C0  Lake Charles      LA      58.34      67.4      259.0      -200.66
KYKZ    LIC   241C1  Lake Charles      LA      57.57      71.1      245.0      -187.43
      Of no concern:
      Coordinates used by KYKZ.

RDEL    DEL   241C2  Madisonville      TX      223.52      291.6      224.0      -0.48
KAGG    LIC   241C2  Madisonville      TX      226.61      291.3      224.0      2.61
ALLO    VAC   242A   Florien           LA      157.44      15.8      133.0      24.44
RADD    ADD   241C2  College Station  TX      251.67      288.1      224.0      27.67
KLSN    LIC   242A   Hudson            TX      164.58      330.4      133.0      31.58
KROK.C  CP -N 239C3  South Fort Polk  LA      123.73      29.0      76.0      47.73
KKTxFM  LIC-N 241C2  Kilgore          TX      272.40      339.3      224.0      48.40
KROK    LIC   239A   South Fort Polk  LA      123.73      29.0      75.0      48.73
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Channel 241C1 (KYKZ)
Sour Lake, Texas
Proposed Class C1 70 dBu Contour

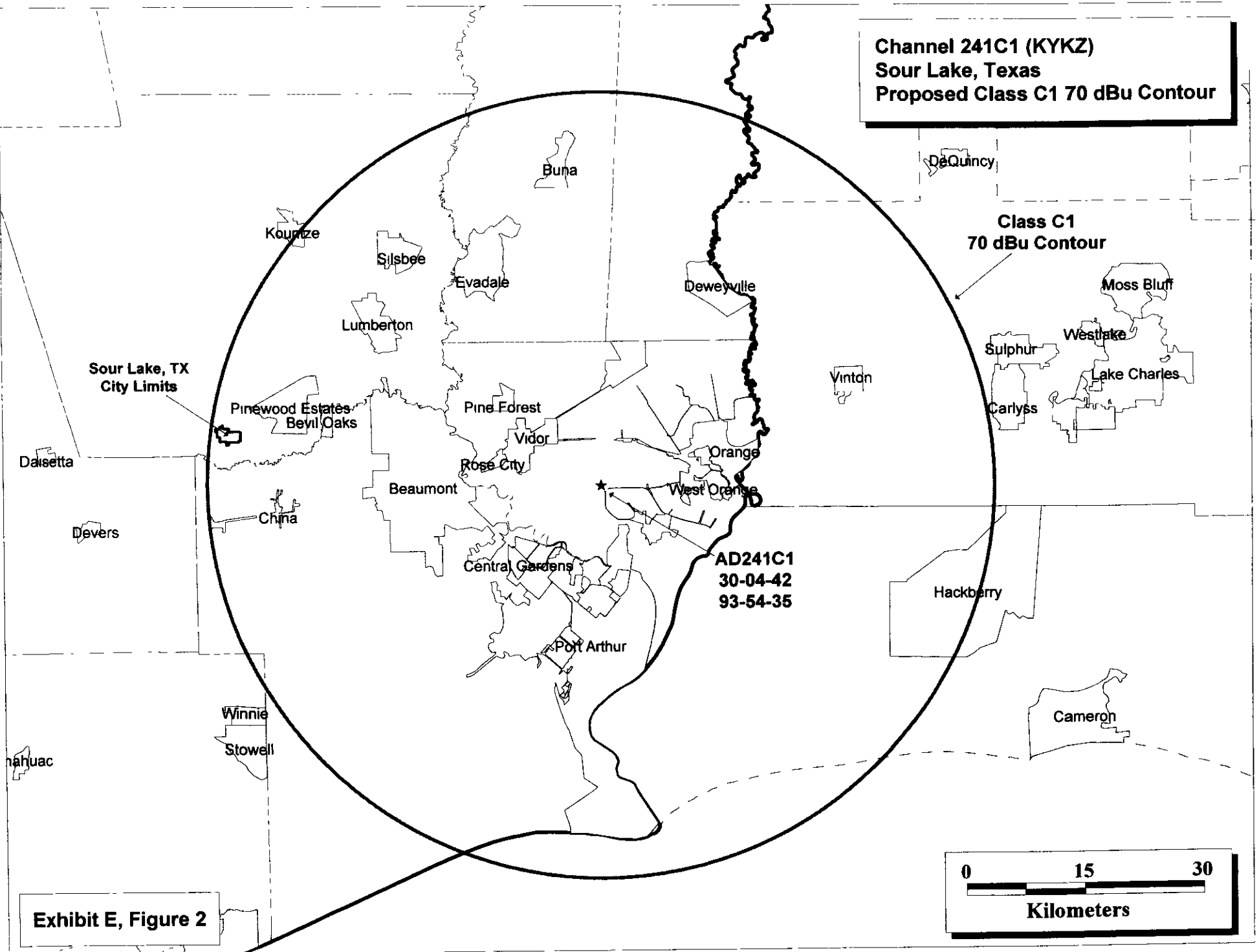


Exhibit E, Figure 2

Channel 241C1 at
Sour Lake, Texas (KYKZ)
Gain/Loss Study

Gain Area = 10,440 sq km
Loss Area = 4,550 sq km
Pop. Gain = 357,495
Pop. Loss = 54,924

LOSS
AREA

GAIN
AREA



Exhibit E, Figure 3

**Channel 241C1 at
Sour Lake, Texas (KYKZ)
Remaining Services Study**

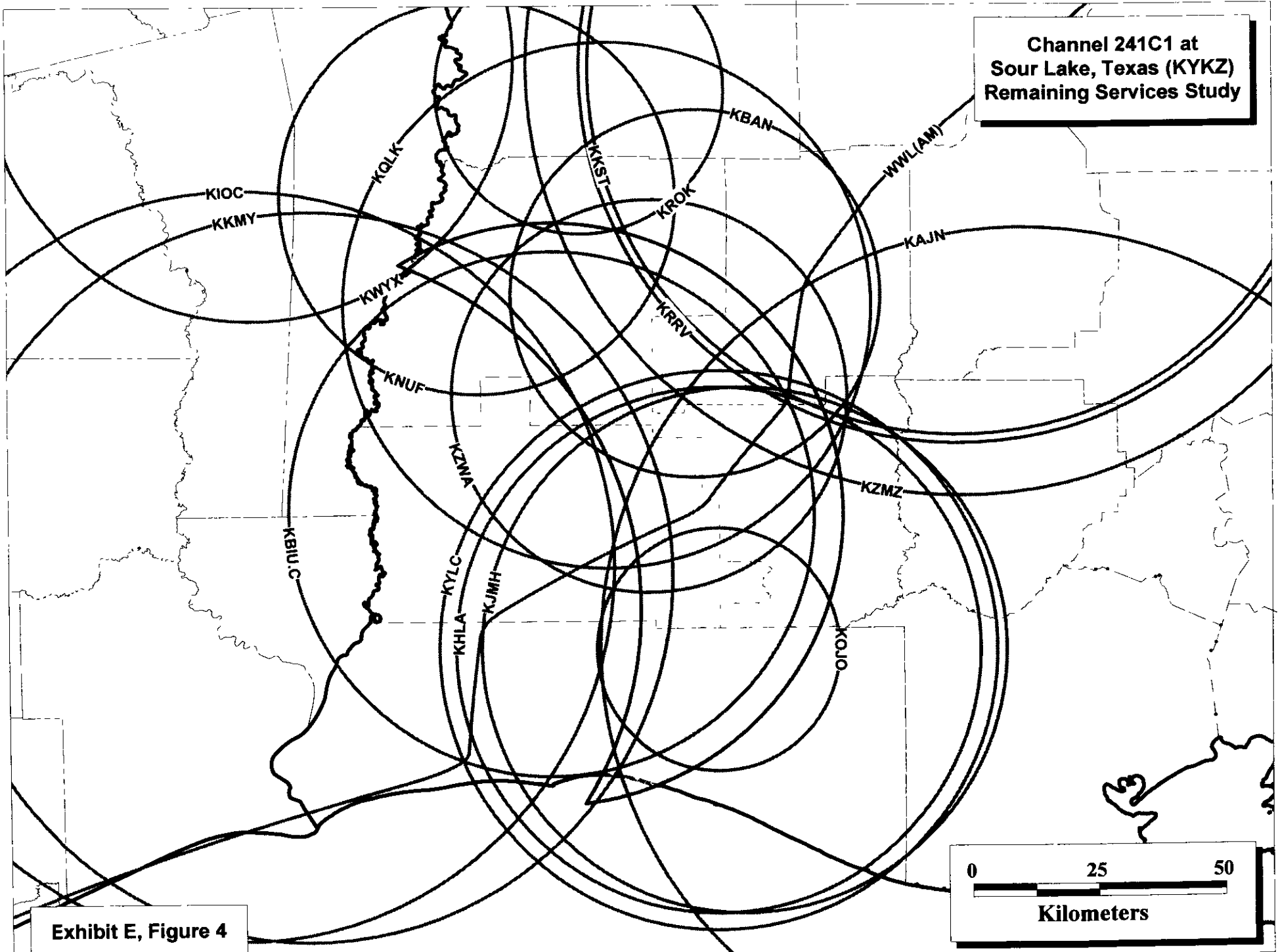


Exhibit E, Figure 4